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GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 538, and 552

[(Change 56); GSAR Case 2012-G501

Docket No. 2013-0006; Sequence No. 1]

RIN 3090-AJ36

**General Services Administration Acquisition Regulation;
(GSAR); Electronic Contracting Initiative (ECI)**

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to add a Modifications (Federal Supply Schedule) clause, and an Alternate I version of the clause that will require electronic submission of modifications under Federal Supply Schedule (FSS) contracts managed by GSA. The public reporting burdens associated with both the basic and Alternate I clauses are also being updated.

DATES: Effective: **[Insert date 30 days after date of publication in the FEDERAL REGISTER].**

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, 202-357-9652 or email Dana.Munson@gsa.gov, for clarification of content.

For information pertaining to status or publication schedules, contact the Regulatory Secretariat (MVCB), 1800 F

Street, NW, Washington, DC, 20405, 202-501-4755. Please cite GSAR case 2012-G501.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a proposed rule with a request for public comments in the Federal Register at 78 FR 31879 on May 28, 2013, to amend the GSAR to add clause 552.243-81 Modifications (Federal Supply Schedule), and an Alternate I version of the clause that requires electronic submission of modifications for FSS contracts managed by GSA.

GSAR Clause 552.243-81, Modifications (Federal Supply Schedule) will replace 552.243-72, Modifications (Multiple Award Schedule), which was removed during the initial GSAR rewrite under GSAR proposed rule GSAR case 2006-G507 that was published in the Federal Register at 74 FR 4596 on January 26, 2009. Withdrawal of GSAR case 2006-G507 was published in the Federal Register at 77 FR 76446 on December 28, 2012.

The alternate version of the clause implements and mandates electronic submission of modifications, and only applies to FSS contracts managed by GSA. The alternate version of the clause links to GSA's electronic tool, eMod at <http://eoffer.gsa.gov/>. Use of eMod will streamline the modification submission process for both FSS contractors and contracting officers.

Use of eMod will establish automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster GSA's Rapid Action Modification (RAM), which allows contracting officers to process certain modification requests to the FSS contract (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30).

Current and new FSS contractors will be required to obtain a digital certificate in order to comply with submission of information via eMod. A digital certificate is an electronic credential that asserts the identity of an individual and enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate at the associated cost during that time. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance and at renewals every two years. Having a digital certificate creates digital signatures which are verifiable. GSA has developed training on eMod, and obtaining a digital certificate. This information is posted on GSA's eOffer website at <http://eoffer.gsa.gov>.

The Department of Veterans Affairs (VA) does not have access to eMod, and is therefore not required to comply with the requirements of the Alternate I version of GSAR clause 552.238-81, Modifications (Federal Supply Schedule). VA will continue to utilize the basic version of the clause in management of their FSS contracts.

GSA is in the process of rewriting each part of the GSAR and GSAM, and as each GSAR part is rewritten, GSA will publish it in the Federal Register for comments. This rule, Electronic Contracting Initiative (Modifications), is included in the rewrite of GSAR Part 538, Federal Supply Schedule Contracting.

One respondent submitted a comment in response to the proposed rule. The comment is addressed in the Discussion and Analysis section below of this rule.

II. Discussion and Analysis

The General Services Administration reviewed the comment in the development of this final rule. The commenter requested GSA contact them regarding "accountability of Chevron contract #1", in which they have "percent interest in these assets." GSA contacted the commenter to follow-up on their request. Based on the telephone discussion, it was determined that the commenter wanted GSA to address accountability within the partnership agreement. The comment received was outside the scope of

this case; therefore, no changes were made to the final rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the proposed rule will implement a streamlined, electronic process for submission and processing of modification requests pertaining to FSS contracts managed by GSA. However, small businesses will be positively impacted by this initiative in that the process for submitting

information is simplified, more structured and easy to use, and processing time is significantly reduced. For example, submission of a paper modification request is often a labor intensive process that involves repeated exchanges of information via standard mail and/or facsimile. The electronic process will include controls to prevent submission of incomplete requests that require follow-up.

Contractors will be able to offer the latest products and services to the Federal Government faster and more often due to this streamlined submission process.

Contractors will be required to obtain a digital certificate in order to comply with the eMod requirement. The cost of the digital certificate will impose some economic impact on all contractors, both small and other than small, doing business under Federal Supply Schedule contracts managed by GSA. Therefore, a Final Regulatory Flexibility Analysis (FRFA) has been prepared consistent with 5 U.S.C. 603, and is summarized as follows:

The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.238-81, Modifications (Federal Supply Schedule) back into the GSAR, and an alternate version of the clause that requires electronic submission of modifications for Federal Supply Schedule (FSS) contracts managed by GSA via eMod. The addition of the basic clause is an administrative change that reinstates a previous clause inadvertently removed from the GSAR. The alternate clause has never received public comment.

The alternate version of this clause mandates electronic submission of modifications through GSA's electronic tool, eMod. Use of eMod establishes automated controls in the modification process that will ensure contract documentation is completed and approved by all required parties. Additionally, eMod will foster Rapid Action Modification (RAM), which allows contracting officers

to process certain modifications (e.g., administrative changes) as unilateral modifications with no requirement for contractor signature on the Standard Form 30, Amendment of Solicitation/Modification of Contract (SF30). eMod will streamline the process and result in modification actions being processed more timely and efficiently.

In addition to adding automated controls into the modification process, mandating the electronic submission of modifications will support several Federal Acquisition Service (FAS) initiatives that are currently underway to enhance the MAS Program's ability to transition to a completely electronic contracting environment. These initiatives include but are not limited to digitization of Multiple Award Schedule (MAS) contract files, Contracts Online, and the Enterprise Acquisition Solution (EAS).

eMod is consistent with the Electronic Signatures In Global and National Commerce Act (E-SIGN), enacted on June 20, 2000, and the Office of Management and Budget (OMB) Memoranda M-00-15, Guidance on Implementing the Electronic Signatures, dated September 25, 2000.

All of GSA's FSS contractors (19,000) will be required to obtain a digital certificate in order to comply with this requirement. Approximately 80 percent (15,200) GSA FSS contracts are held by small businesses. A digital certificate is an electronic credential that enables eMod to verify the identity of the individual entering the system and signing documents. The certificate will be valid for a period of two years, after which, contractors must renew the certificate. At present, two FSS vendors are authorized to issue digital certificates that facilitate the use of eMod, at a price of \$119 per issuance. The alternate version of this requirement does not apply to FSS contracts managed by the Department of Veteran Affairs (VA) because the VA does not utilize or have access to eMod.

V. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, these changes to the GSAR do not impose additional information collection requirements to the paperwork burden previously approved under the Office of Management and Budget Control Number 3090-0302, titled: Modifications (Multiple Award Schedule): GSAR Part Affected: 552.243-81.

List of Subjects in 48 CFR Parts 501, 538, and 552

Government procurement.

Dated: March 5, 2014.

Jeffrey Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy.

Therefore, GSA amends 48 CFR parts 501, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 501, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

**PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION
REGULATION SYSTEM**

501.106 [Amended]

2. Amend section 501.106 in the table, by adding in sequence, GSAR Reference "552.238-81" and its corresponding OMB Control Number "3090-0302".

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

3. Amend section 538.273 by adding paragraph (b)(3) to read as follows:

538.273 Contract clauses.

* * * * *

(b) * * *

(3) 552.238-81, Modifications (Federal Supply Schedule). Use Alternate I for Federal Supply Schedules that only accept electronic modifications.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 552.238-81 to read as follows:

552.238-81 Modification (Federal Supply Schedule).

As prescribed in 538.273(b), insert the following clause:

MODIFICATIONS (FEDERAL SUPPLY SCHEDULE) [(INSERT 30 DAYS AFTER
DATE OF PUBLICATION IN THE FEDERAL REGISTER)]

(a) General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

(b) Types of Modifications. (1) Additional items/additional SINS. When requesting additions, the following information must be submitted:

(i) Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINS.

(ii) Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.

(iii) Information about the new item(s) or the item(s) under the new SIN(s) as described in 552.212-70, Preparation of Offer (Multiple Award Schedule), is required.

(iv) Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with FAR 552.211-78, Commercial Delivery Schedule (Multiple Award Schedule).

(v) Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications—Commercial Items, that may be necessary to assure compliance with FAR 52.225-1, Buy American Act—Balance of Payments Programs—Supplies.

(2) Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher

price to be unreasonable when compared with the deleted item.

(3) Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at 552.238-75. If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction.

(c) Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at 552.238-75.

(d) Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at 552.238-75.

(e) Amendments to Paper Federal Supply Schedule Price Lists.

(1) The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i) Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii) Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.

(2) At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.

(End of Clause)

Alternate I (INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER). As prescribed in 538.273(b)(3), add the following paragraph (f) to the basic clause:

(f) Electronic submission of modification requests is mandatory via eMod (<http://eOffer.gsa.gov>), unless otherwise stated in the electronic submission standards and requirements at the Vendor Support Center website (<http://vsc.gsa.gov>). If the electronic submissions standards and requirements information is updated at the Vendor Support Center website, Contractors will be notified prior to the effective date of the change.

[BILLING CODE 6820-61]

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